IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

OP.No. 13513 of 1998(H)

PETITIONERS:

1. ISSAC C. ROY (MINOR) SON OF ROY PETER, PALAL, JAWAHAR NAGAR, TRIVANDRUM.

2. PETER C. ROY (MINOR), S/O. ROY PETER DO. DO.

3. ROY PETER, PALAL, JAWAHAR NAGAR, TRIVANDRUM.

4. MRS. PREETHA ROY,W/O. ROY PETER, DO. DO.

MINOR PETITIONERS 1 AND 2 ARE REPRESENTED BYO NEXT FRIEND-MOTHER, THE 4TH PETITIONER.

BY ADV. SRI.TKM.UNNITHAN
SRI.MATHEW UMMEN

RESPONDENTS:

1. THE COMMISSIONER OF INCOME TAX, TRIVANDRUM

2. THE ASSISTANT COMMISSIONER OF INCOME TAX (H), OFFICE OF THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

3. THE INCOME TAX OFFICER, WARD-I, TRIVANDRUM.

4. UNION OF INDIA, REP. BY FINANCE SECRETARY, GOVT. OF INDIA, NEW DELHI.

BY ADV. SRI.P.K.RAVINDRANATHA MENON (SR.)
SRI.NRK.NAYAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF DECLARATION OF 1ST PETITIONER RELATING TO ASSESSMENT YEARS 1995-96 AND 1996-97.

EXT.P2 DECLARATION OF 2ND PETITIONER DO. DO.

EXT.P3 ACKNOWLEDGE DT. 30-12-1997.

EXT.P4 DO. DT. 30-12-1997.

EXT.P5 DO. DT. 30-12-1997.

EXT.P6 DO. DT. 30-12-1997.

EXT.P7 COMMUNICATION DT. 9-3-1998.

EXT.P8 DO. DT. 9-3-1998.

EXT.P9 REVISED STATEMENT OF INCOME FOR 1995-96.

EXT.P10 DO. FOR 1996-97.

EXT.P11 APPLICATION DT. 11-5-1998.

EXT.P12 DO. DT. 11-5-1998

EXT.P13 PETITION DT. 11-5-1998.

EXT.P14 ORDER DT. 19-5-1998.

RESPONDENTS' EXHIBITS:

EXT. R2(A) COPY OF CIRCULAR NO. 754.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 13513 of 1998

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Dated this, the 8th January, 2007.

J U D G M E N T

Petitioners 3 and 4 are father and mother respectively of petitioners 1 and 2 who are minors. These minors also derive income taxable under the Income Tax Act. Apparently, some income so derived by the minors were not disclosed in the returns for the relevant period. Government brought into force by the Finance Act, 1997, the Voluntary Disclosure of Income Scheme, 1997 (for short 'the Scheme') by which on declaration of income, which were earlier not disclosed, no penalty would be attracted and the assessee was allowed to pay the tax at 30% of the income disclosed. The 3rd petitioner-father filed a declaration under the Scheme on behalf of the minors on 30-12-1997. On 31-12-1997, the last date fixed for filing return under the Scheme expired. The tax due on the income was also paid. Subsequently, the return was rejected as invalid on the ground that a minor was not entitled to file a return under the Scheme subsequent to the assessment year 1993-1994. In the above circumstances, the 4th petitioner-mother filed a return including the said income in her return and sought for adjustment of the tax paid at the time of filing return under the Scheme. This was rejected on the ground that as per the Scheme, tax once paid would not be refunded. The request of the 4th petitioner to adjust the tax paid against the tax payable under her return was also rejected by Ext. P14 order. This is under challenge in this original petition.

The contention of the petitioners is that since the intention of the petitioners was bona fide and the mistake occurred on account of the circumstances beyond the control of the petitioners although they may not be entitled to the benefit of the Scheme, certainly, the respondents cannot deny the benefit of adjustment of the amount already paid towards tax payable on the 4th petitioner's return. The

petitioners rely on a decision of the Supreme Court in Hemalatha Gargya v. Commissioner of Income-tax and another, reported in [2003] 259 ITR 1. In that case, return under the Scheme was delayed by one day. The tax paid pursuant thereto was refused to be adjusted or refunded to the assessee. Although, in that decision the Supreme Court denied the assessee the benefit of the Scheme, it held thus:

> "As a consequence, in our view, the appeals preferred by the assessees must be and are hereby dismissed whereas the appeals preferred by the Revenue authorities must be and are hereby allowed. However, having held that the assessees are not entitled to the benefit of the Scheme since the payments made by them were not in terms of the Scheme, we direct the Revenue authorities to refund or adjust the amounts already deposited by the assessees in purported compliance with the provisions of the Scheme to the concerned assessee in accordance with law. All the appeals are accordingly disposed of without any order as to costs."

I am of opinion that the said direction of the Supreme Court squarely applies to the petitioners' case.

In the above circumstances, I direct the respondents to adjust the tax paid by the petitioners at the time of filing the return under the Voluntary Disclosure of Income Scheme, 1997 in respect of the pending demands from the petitioners under the Income-tax Act. The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/